

LAW OF CIVIL PROCEDURE

MEMO – TEST – 15 JUNE 2020

Question 27

5 marks

Any 5 -

- What document has been served / It does not identify the document.
- Whether service was successful or not.
- Where and when/what time service was effected / It does not specify the place/address and time of service.
- Explanation of nature and contents / It does not state that the sheriff explained the document.
- Wrong sheriff - Durban sheriff does not have jurisdiction to serve in Bloemfontein
- Wrong court – refers to clerk of MC whilst this is a HC matter.
- Documents may not be served on a Sunday
- May not be served on a cleaner – has to be a person in charge.
- No division of High Court specified in heading.

Question 28

2 marks

- The application procedure does not, as a general rule, allow for oral evidence. So evidence must be included in affidavits. Affidavits should include both facta probanda and facta probantia.
- Vs the Action procedure:
 - Oral evidence / a formal trial is provided for where evidence can be lead.
 - Evidence is reserved for trial and should not be included in pleadings as it will render the documents irregular.

Question 29

1 mark

Full citation must be correct.

The Plaintiff is Professor P (insert name) Nuts a major male professor who is employed at/resides at (address).

Question 30

1 mark

The Plaintiff is Mr Steve Smith (NO), a major male chartered accountant who is employed at/resides at ... (address) in his capacity as trustee of the Smith family trust.

Question 31

1 mark

The Plaintiff is Matrix (Pty) Ltd, a private company with limited liability duly registered in terms of the laws of the RSA/the Companies Act, 2008 having its registered address at ...

Question 32

1 mark

Performance is typically required within a certain time period, ie a certain number of days from date of the letter. Alternatively a date for performance must be specified.

We don't want to use date of receipt of the letter as a reference point, because this not certain.

Question 33

1 mark

No - The NCA does not apply here so a S 129 letter is not required.

Question 34

1 mark

It establishes/confirms the attorney's mandate.

It makes it clear who to contact.

Question 35

1 mark

No.

Arrest is no longer possible (Coetzee vs Government of the RSA, CC) in civil matters involving inability to pay debt.

Question 36

1 mark

No.

Only facts in issue to be included, no evidence. This is to be reserved for trial.

Question 37

1 mark

The applicant is the only person with an interest in the case.

There is no need to give notice to any respondent(s).

It is an ex parte application.

Question 38

1 mark

HCR 6 stipulates that an application is made up of a notice of motion plus an affidavit.

The affidavit sets out the material facts/facta probanda and the evidentiary facts/facta probantia that the court will need to consider to grant the application. The court will not be able to consider an application without an affidavit, which sets out the facts and evidence. Without this, no facts/evidence will be placed before the court and it won't be able to consider the matter.

It is irregular to the rules of court.

Question 39

1 mark

An affidavit which is attached to the notice of motion, which sets out evidence by/in the knowledge of another party in support of the application.

Question 40

2 marks

No

Reason:

This is an ex parte application / no opposition.

There is no other party with an interest in the matter.

Nature of the matter.